IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No. 686 of 1988

For Approval and Signature:

HON'BLE MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

TIKAMDAS CHUHARMAL POPTANI

Versus

KISHORCHAND PHATAMAL DHANWANI

Appearance:

1. Civil Revision Application No. 686 of 1988

MS AMI PATEL for Mr. NK MAJMUDAR for Petitioner

MR BF UJJAINI for Respondent {Absent}

CORAM : HON'BLE MISS JUSTICE R.M.DOSHIT

Date of decision: 13/04/2005

ORAL JUDGEMENT

This is one of the umpteen matters where the

registry has failed to send intimation of admission of the Civil Revision Application to the court below for nearly fifteen years i.e. until 10th April, 2003. In the meanwhile, the Court below has destroyed the original record of the matter in accordance with the relevant provisions of the Civil Manual. Therefore, this Court is constrained to decide the matter without reference to the original record.

The petitioner-plaintiff in HRP Suit No. 2410 of 1983 has preferred present Revision Application under Section 29 (2) of the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947 [hereinafter referred to as, "the Rent Act"] against the judgment and order dated 30th July, 1987 passed by the appellate bench, Small Causes Court, Ahmedabad in Civil Appeal No. 114 of 1985.

The premises in question is part of a residential flat situated at Maninagar, Ahmedabad comprising two rooms and a kitchen. The petitioner-landlord instituted HRP Suit No. 2410 of 1983 in the Court of Small Causes, Ahmedabad. It was the case of the petitioner that he was the owner of the suit flat; that part of the flat comprising two rooms and a kitchen was leased to the respondent-tenant for a monthly rent of Rs. 300/=. It was also alleged that the respondent had trespassed into the remaining two rooms of the said flat. A suit for eviction from the said two rooms was instituted in the City Civil Court at Ahmedabad; that the respondent was in arrears of rent since 1st April, 1981; that inspite of the suit notice dated 27th April, 1983, the respondent did not pay the rent. Therefore, the suit for recovery of possession of the suit premises and the arrears of rent.

The suit was contested by the respondent by filing written statement Exh.11. It was denied that only part of the suit flat was leased to the respondent for a monthly rent of Rs.300/=. It was alleged that the entire suit flat was leased to the respondent by one Naomal Kundomal for a monthly rent of Rs.200/=; that in HRP Suit No.4833 of 1982 instituted by the respondent against the petitioner for injunction, the respondent had deposited the entire amount of rent at Rs.200/= per month.

The learned trial Judge by his judgement and order dated 18th March, 1984 dismissed the suit. The learned trial Judge was pleased to hold that the petitioner had failed to prove his title, and therefore, the suit was not maintainable. Feeling aggrieved, the petitioner preferred above referred Civil Appeal No.114

of 1985 before the appellate bench, Small Causes Court, Ahmedabad. The appellate bench held that the standard rent of the suit premises was Rs.400/= per month; exclusive of municipal tax and education cess and that the respondent was protected by Section 12 (3)(b) of the Rent Act. As the standard rent was determined alongwith the other issues, by order dated 13th April, 1987, the respondent was directed to deposit the arrears of rent due on or before 30th June, 1987. In compliance with the said order, the respondent filed a purshis Exh. 14 and declared that in compliance with the order dated 13th April, 1987, he had deposited a sum of Rs. 30,000/= in the court. In view of the compliance with the said order, the lower appellate court by its order dated 30th July, 1987 dismissed the appeal. Therefore, the present Revision Application.

The lower appellate court has considered the evidence on record and has recorded a finding that the municipal taxes for the entire suit flat was paid by the respondent since the year 1976. It was the respondent who received the electric consumption bills and paid the same. It is, therefore, held that the respondent was in possession of the suit flat since the year 1976. The petitioner's allegation that the respondent had forcefully entered into possession of the remaining two rooms of the suit flat has been held to be false. It is evident that the defendant had raised the dispute as to the standard rent of the suit premises and the defendant was also liable to pay taxes. Hence, in my view, the lower appellate court has rightly held that the respondent was entitled to protection under Section 12 (3)(b) of the Rent Act. As recorded in the judgment, the respondent having paid up the standard rent and permitted increases as directed by the court below, no decree for eviction can be passed against him.

No other contention is raised before me. In above view of the matter, the Revision Application is dismissed with cost. Rule is discharged.

{Miss R.M Doshit, J.}

Prakash*